

Application Serial No. 09/810,559
Attorney Docket No. 110275.4500-US2

PATENT

REMARKS

In the Office Action, the Examiner noted that claims 1-65 are pending in the application, and that claims 1-65 are rejected.

By this Amendment, claims 1, 26 and 43 have been amended, and no claims have been cancelled. Therefore, claims 1-65 are pending in the application. The Examiner's rejections are traversed below.

Objection to the Drawings

The drawings are objected to as not including reference indicators from the specification, and including reference indicators that are not described in the specification. The specification has been amended to correct this informality. Withdrawal of this objection is respectfully requested.

Rejection Under 35 U.S.C. Section 103

Claims 1-65 stand rejected under 35 U.S.C. Section 103 as being unpatentable over what the Examiner asserts is admitted prior art, in view of Coskrey U.S. Patent 6,336,171 and/or Choquier et al. U.S. Patent 5,951,694. Applicant respectfully disagrees.

First, Applicant disagrees with the Examiner's characterization of "admitted" prior art. There is no admitted prior art in the present application. Rather, the present application cites in the background art section U.S. Patent 5,819,172. Applicant is seasonably traversing the Examiner's indication of admitted prior art. This patent is clearly unrelated to the presently claimed invention as described in the specification. Applicant requests the Examiner to cite portions of the prior art 5,951,694 to support the rejection, or withdraw the rejection. Alternatively, if this information is in the personal knowledge of the Examiner, Applicant requests the Examiner to provide an affidavit under 37 C.F.R. Section 1.104(d)(2)

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detailing the reasons or a prior art reference. In the absence of either, Applicant requests the Examiner to withdraw the rejection.

In addition, Applicant respectfully submits that the present application makes clear that prior art 5,819,172 does not relate to the present application. For example, the specification recites:

Prior art FIGs. 1-3 [U.S. Patent 5,819,172], however, do not generally relate to, for example, providing an integrated or combination real time and polled electronic messaging system, method and/or a computer readable medium storing computer-executable instructions for enabling e-mail messages and/or other data messages and/or services to be transmitted and/or received via a wireless communications device on either a real time and/or polled basis.

The specification further states in connection with one or alternative features of the present invention:

We have determined that introducing a POP3 and IMAP service within a real time delivery scheme, therefore, would advantageously allow users to send and/or receive both polled and/or real time messages.

We have also determined that a need exists for an integrated wireless communications system that allows users to send and/or receive messages on a real time and/or near real time basis via an e-mail or other data message account associated with a wireless communications device, while also allowing users to utilize the wireless communications device to check messages stored within, for example, a separate (POP or IMAP) e-mail or data message account associated with, for example, a personal or corporate e-mail account.

The present invention also advantageously and optionally allows users to utilize the wireless communications device to check messages stored within, for example, a separate POP or IMAP e-mail or data account.

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The agent gateways and/or messenger gateways thus allow a single user to hold more than one e-mail account, and access each of those accounts via a single wireless device

That is, the user can set filters associated with polling of the agent gateway in a manner such that he does not receive any messages therefrom unless the user, for example, manually queries an agent gateway. Alternatively, the user may set a filter such that the wireless device automatically polls an agent gateway at a particular time or times during the day (e.g., 9:00 AM and/or 5:00 PM and/or every 30 minutes). If the user sets the filters such that he must manually poll an agent gateway to receive messages therefrom, if he is in a meeting then he knows that any messages he receives on the wireless device are coming via a messenger gateway (e.g., the message has an address of the form <username>@2way.net), and not something that was sent to his POP and/or IMAP desktop e-mail or other message account that has been forwarded to him. Thus, a user can provide his <username>@2way.net or other predefined account to people, for example, to whom he tells to not send him an e-mail at this address unless you really need to contact me for something very urgent.

The Examiner's citation of Applicant's specification as admitted prior art is traversed. In addition, Applicant disagrees with the Examiner that the purported admitted prior art shows "substantial features" of the invention. To the contrary, Applicant disagrees as described herein.

In addition, Applicant respectfully submits that U.S. Patent 5,819,172 is clearly different from the agent/messenger invention. That is, U.S. Patent 5,819,172 does not, for example, provide the ability to receive messages on a polled and real-time basis in accordance with at least one embodiment of the invention.

U.S. Patent 5,819,172 is also not capable of providing more than one e-mail account, and permitting a wireless device to access more than one account from other side. For example, the invention includes the features of: first and second gateways transmitting and receiving signals on a real-time and polled basis, respectively; scheduler – device action manager – download combination; determining whether to transmit signals in real-time or on a polled basis, and the like. Contrary to the Examiner's assertions, neither the "admitted prior

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art" nor U.S. Patent 5,819,172 disclose these features of the present invention, or other features of the present invention.

Further, the Applicant notes upon review of the corresponding international patent application files that the International Patent Examiner has already considered the agent/messenger invention patentable over the prior art, including U.S. Patent 5,819,172. The Examiner has provided no motivation or suggestion from the prior art to support a prima facie case of obviousness.

Applicant has further amended the claims to provide the appropriate scope of protection that Applicant is seeking, and to make express what Applicant considers to be inherently claimed.

With respect to Claim 1, without conceding that the cited prior art discloses any of the elements of the present invention, Applicant respectfully submits that the prior art does not show or suggest the combination of limitations in claim 1, when claim 1 is interpreted as a whole.

For example, claim 1 recites the following, in combination, a "communications system for transmitting and/or receiving signals with at least two communication devices via a real time and/or a polled transmission." The communications system includes "at least one first gateway responsively communicable with at least a first communications device and at least a second communications device, wherein said at least one first gateway at least one of transmits and receives signals on a real time basis with the at least one first communications device and the at least one second communications device." In addition, the communication includes "at least one second gateway responsively communicable with the at least one first communications device and at least a third communications device, wherein said at least one second gateway at least one of transmits and receives signals on a polled basis with the at least one first communications device and the at least one third communications device, said at least one first gateway and said at least one second gateway are operatively connectable to each other to perform the real time and the polled transmission based upon predetermined criteria." Further, the communications system comprises an integrated wireless

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communications system providing the sending and receiving of messages on the real time and the polled transmission, while also allowing users to utilize the wireless communications device to check messages stored within a separate at least one of POP and IMAP data message account."

Accordingly, Applicant submits that the combination of limitations recited in claim 1 patentably distinguishes over the prior art cited by the Examiner. Withdrawal of this rejection is respectfully requested.

In addition, Applicant respectfully submits that claims 2-65 also patentably distinguish over the prior art for the specific combination of limitations recited in each of the claims, when each claim is interpreted as a whole. Withdrawal of the rejection of these claims is respectfully requested.

With respect to specific statements submitted by the Examiner characterizing the prior art, Applicant respectfully disagrees with the Examiner. For example, Applicant disagrees that gateways being connected to each other was well known in the context of the present invention. In the present invention, the gateways are utilized for separate transmission processes. The Examiner has provided no motivation or suggestion from the prior art to support a prima facie case of obviousness.

With respect to the Examiner's statement regarding implicit teachings in the prior art, see for example, claims 19, 20, 36, 37, 64, 65, Applicant disagrees with the Examiner that this is an appropriate consideration for an obviousness rejection. Something that is implicit, is not necessarily obvious. Accordingly, this information must be within the personal knowledge of the Examiner, and therefore, Applicant requests the Examiner to provide an affidavit under 37 C.F.R. Section 1.104(d)(2) detailing the reasons or a prior art reference. In the absence of either, Applicant requests the Examiner to withdraw the rejection.

With respect to the Examiner's statement that load balancing was well known in the art, Applicant again disagrees in the context of the present invention. Applicant requests the Examiner to provide an affidavit under 37 C.F.R. Section 1.104(d)(2) detailing the reasons or

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a prior art reference. In the absence of either, Applicant requests the Examiner to withdraw the rejection.

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CONCLUSION

Applicants respectfully submit that, as described above, the cited prior art does not show or suggest the combination of features recited in the claims. Applicants do not concede that the cited prior art shows any of the elements recited in the claims. However, Applicants have provided specific examples of elements in the claims that are clearly not present in the cited prior art.

Applicants strongly emphasize that one reviewing the prosecution history should not interpret any of the examples Applicants have described herein in connection with distinguishing over the prior art as limiting to those specific features in isolation. Rather, Applicants assert that it is the combination of elements recited in each of the claims, when each claim is interpreted as a whole, which is patentable. Applicants have emphasized certain features in the claims as clearly not present in the cited references, as discussed above. However, Applicants do not concede that other features in the claims are found in the prior art. Rather, for the sake of simplicity, Applicants are providing examples of why the claims described above are distinguishable over the cited prior art.

Applicants wish to clarify for the record, if necessary, that the claims have been amended to expedite prosecution. Moreover, Applicants reserve the right to pursue the original subject matter recited in the present claims in a continuation application.

Any narrowing amendments made to the claims in the present Amendment are not to be construed as a surrender of any subject matter between the original claims and the present claims; rather merely Applicants' best attempt at providing one or more definitions of what the Applicants believe to be suitable patent protection. In addition, the present claims provide the intended scope of protection that Applicants are seeking for this application. Therefore, no estoppel should be presumed, and Applicants' claims are intended to include a scope of protection under the Doctrine of Equivalents.

Further, Applicants hereby retract any arguments and/or statements made during prosecution that were rejected by the Examiner during prosecution and/or that were

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unnecessary to obtain allowance, and only maintains the arguments that persuaded the Examiner with respect to the allowability of the patent claims, as one of ordinary skill would understand from a review of the prosecution history. That is, Applicants specifically retract statements that one of ordinary skill would recognize from reading the file history were not necessary, not used and/or were rejected by the Examiner in allowing the patent application.

For all the reasons advanced above, Applicants respectfully submit that the rejections have been overcome and should be withdrawn.

For all the reasons advanced above, Applicants respectfully submit that the Application is in condition for allowance, and that such action is earnestly solicited.

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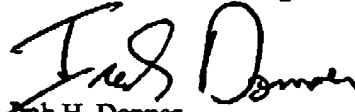
AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees, which may be required for this Amendment, or credit any overpayment to Deposit Account No. 08-0219

In the event that an Extension of Time is required, or which may be required in addition to that requested in a petition for an Extension of Time, the Commissioner is requested to grant a petition for that Extension of Time which is required to make this response timely and is hereby authorized to charge any fee for such an Extension of Time or credit any overpayment for an Extension of Time to Deposit Account No. 08-0219.

Respectfully submitted,

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